DELAWARE V. MERS FACT SHEET

What is MERS: In 1995, banks and others in the mortgage lending industry created the Mortgage Electronic Registration System ("MERS") – a national registry to track ownership and servicing rights for residential mortgages. This system is designed to facilitate mortgage securitizations and circumvent the traditional county Recorders of Deeds offices. The rapid rise in popularity of mortgage backed securities and their subsequent decline in value is a major cause of the housing crisis that sent America's economy into the largest collapse since the Great Depression.

Foreclosure crisis in Delaware: Delaware is experiencing a record rate of foreclosures. The foreclosure rate tripled from 2008 to 2009, rising from 2,000 homes annually to 6,000. A record 6,457 homes were foreclosed on in 2010.

Who owns/uses MERS: There are more than 5,500 members representing the most significant players in the mortgage industry, including: mortgage lenders and servicers (Bank of America, CitiMortgage, Inc., GMAC Residential Funding Corporation, and Wells Fargo Bank, N.A.); government-sponsored entities (e.g., Fannie Mae and Freddie Mac); insurance and title companies and the Mortgage Bankers Association.

MERS in Delaware: MERS purports to hold more than 30% of Delaware mortgages. Since January 1, 2008, MERS has filed more than 1,600 foreclosure actions in its own name against Delaware homeowners. Additionally, thousands of other homeowners whose mortgages have been tracked in the MERS system were foreclosed on by entities whose right to the property was unclear because of the unreliability of MERS' records. Thousands more Delaware homeowners currently hold mortgages with MERS listed as the owner, but with no way to actually determine the true owner.

What is Attorney General Biden alleging: MERS violated Delaware's Deceptive Trade Practices Act by creating an unregulated shadowy registry that is unreliable and inaccurate and blocks homeowners from learning which entity truly owns their mortgage. The complaint highlights three major deficiencies:

- MERS obscures important information from borrowers and what is available to borrowers is frequently inaccurate.
- MERS acts without authority
- MERS is a "front" organization that does not enforce its own rules

How the mortgage industry works: A mortgage loan taken out by a homeowner is really two documents – the first is a promissory note requiring the borrower to repay the holder of the note. The second document (the mortgage instrument) allows the holder to foreclose on the property if the loan is not repaid. The person or entity holding the note receives the money from the borrower’s monthly mortgage payments.

How securitization works: Banks that make the mortgage loans to homeowners sell the mortgage notes to other financial institutions. Several times over, the loans are bundled into investments known as mortgage-backed securities and the notes are sold to large investment groups, such as pension funds.

Where MERS comes in: As the notes are sold in the securitization process, someone has to service the loans and hold legal title to the mortgage instrument. Servicers do all the work involved with a mortgage loan on the lender side – physically collecting and distributing payments, answering borrowers’ questions, etc. MERS acts as passive place-holder on the County Recorder of Deeds public registry. Additionally, MERS can also file foreclosure actions on behalf of the note-holders in foreclosure proceedings. MERS allows its members to sell mortgages many times over without recording the transactions at the local Recorders of Deeds offices, thereby avoiding fees, eliminating any official paper trail and creating significant confusion that has led to improper foreclosures.

What the lawsuit seeks: The suit asks the Court of Chancery to impose various sanctions on MERS, including requiring it to audit its records to ensure accuracy, stop foreclosing on homes without divulging the true owner of the mortgage, and correct records filed with county Recorder of Deeds that do not list the entity that owns the mortgage. The suit seeks a civil penalty against MERS of up to $10,000 for each willful violation of the Deceptive Trade Practices Act, as well as restitution to borrowers who were harmed by these violations. The exact amount will be determined during trial.